

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2784 OF 2004

IN

SUIT NO.2788 OF 2004

Vasant Pandurang Parte ... Plaintiff.

vs.

1. Arun Balwant Mane & others. Defendants.

Mr.G.H.Shukla, for Plaintiff.

Mr.D.R.Jhuria with V.K.Mahangare, for Defendants 2 & 3.

Mr.Milind More, AGP for the Defendants 4 & 5.

CORAM: D.K.DESHMUKH,J.

DATED: 21st July,2005

P.C.:-

1. This is a notice of motion taken out by the plaintiff. The plaintiff has filed the suit under Section 6 of the Specific Relief Act for decree of possession. According to the plaintiff, the plaintiff was in possession as a tenant of one room from the year 1999. According to

the plaintiff, he handed over the possession of that room to M.H.A.D.A.-Defendant no.4 for repairs of the room. While handing over the possession, he did not remove all his articles and some of the articles were kept in the said room. It is submitted that defendant nos. 1 to 3 forcibly took the possession from MHADA and that event occurred on 3.6.2004. Thus, according to the plaintiff, he has been dispossessed by defendant nos.1 to 3 on 3.6.2004. From the averments in the plaint, it is clear that the plaintiff lost the possession of the room when he handed over the room to defendant no.4-MHADA for the purpose of repairs on 28.4.2004. Had the plaintiff been in a position to establish prima facie that he retained certain articles in the premises, and therefore, he continued to be in possession, then it could have been said that the plaintiff has made out a prima facie case. But except the averments in the plaint that the articles were lying in the premises when he handed over the premises/room to MHADA, there is no document produced on record to show that. Thus, it appears that the plaintiff lost the possession of the room when he handed over the room to MHADA for the purpose of repairs and therefore, dispossession of the plaintiff would be by MHADA on 28.4.2004. If it is the case of the plaintiff that he handed over possession of the room to the MHADA for the purpose of repairs in April,2004 and therefore he was entitled to receive possession from the MHADA, then his cause of action for regaining the possession would be against the MHADA and

not against defendant nos.1 to 3. Because the defendant nos. 1 to 3 have taken possession while the premises were in possession of the MHADA, then it is for the MHADA to get back the possession from them and deliver it to the plaintiff. In any case this cannot be the subject matter of the suit filed under Section 6 of the Specific Relief Act. The scope of Suit under Section 6 of the Specific Relief Act is extremely limited. Taking overall view of the matter therefore, in my opinion, it cannot be said that the plaintiff has made out a case which will entitle the plaintiff for Receiver to be appointed on the premises. However, it does appear that the plaintiff was occupying the premise as a licensee or lessee and there also does not appear to be any order of any competent Court for eviction of the plaintiff from the premises, therefore, in my opinion, the interest of the plaintiff can be protected by granting order of temporary injunction restraining the defendant nos. 1 to 3 from transferring or parting with the possession of the premises. Hence, interim order in terms of prayer clause (c) is granted. Notice of Motion disposed of.
